IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

NO. 84704-5

PETER GOLDMARK, AS CHIEF EXECUTIVE OFFICER OF THE DEPARTMENT OF NATURAL RESOURCES AND COMMISSIONER OF PUBLIC LANDS,

Petitioner,

v.

ROBERT M. McKENNA, ATTORNEY GENERAL,

Respondent.

PETITIONER'S REPLY BRIEF

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I. INTRODUCTION

The Attorney General asserts that he has the authority to refuse requests from elected state officers for representation in court. Regardless whether his decision is based on political considerations or his view of what the agency's policy objectives should be, he asserts a broad discretion in the name of the amorphous "legal interests of the State" to refuse representation to state officers. Resp. Br. at 1, 7, 9, 21-23, 38-39.

This an astounding proposition. It finds no support in the words of the Constitution or the implementing legislation. Nor does it find support in any of the case law in this state which makes clear that the Attorney General enjoys only those powers delegated to him by the Constitution and the implementing legislation.

The Attorney General's position begs the question: If the Attorney General gets to operate as a "check" on other elected state officers, who operates as a check on him? If he refuses to file or defend lawsuits when requested by state officers, he effectively usurps their ability to implement (or defend their implementation of) legislatively established policies.

Not only would the Attorney General trample on the policy prerogatives of elected state officers, he also seeks to usurp the function of

the courts. If a state agency seeks to pursue a policy initiative by initiating or defending litigation, the courts will determine whether the state officer's policy position is legally justified or not. But according to the Attorney General, *he* gets to decide whether policies pursued by state officers are consistent with statutory requirements. Certainly the Attorney General can provide advice regarding these matters, but the Constitution squarely gives the duty to ultimately construe the law to the judiciary, not the Attorney General.

The Attorney General's refusal to abide by a request to defend a lawsuit by the Commissioner in this case is all the more egregious because RCW 43.12.075 expressly and unambiguously mandates that the Attorney General defend lawsuits involving the Commissioner of Public Lands "when requested to do so by the Commissioner." If the Attorney General succeeds in claiming a power to ignore such requests in the face of an unambiguous statute, woe to other state officers and agencies who rely on the Attorney General in the courts, but will not be able to depend on him to appear.

Numerous cases cited by the Attorney General make clear that third parties cannot force the Attorney General to initiate a lawsuit to prosecute a crime or to right a civil wrong. But those prosecutorial discretion cases have

nothing to do with the issue presented here. In none of those cases did a client agency request the Attorney General to act on its behalf. And in none of those cases was there a statute that mandated the Attorney General to do so.

II. THE ATTORNEY GENERAL SEEKS TO USURP THE AUTHORITY OF THE COMMISSIONER, LEAVING HIM DEFENSELESS AND, SIMULTANEOUSLY, INTRUDING ON THE JUDICIARY'S ROLE

The Attorney General makes a bold claim for unprecedented authority. He claims that he – not the client agencies – decide whether his office will provide them with legal representation when they are sued or seek to initiate litigation.

The Attorney General's arguments are dangerous because they are not limited to the facts of this case. According to the Attorney General, he – not the elected head of an agency (or even the Governor) – can require him to provide legal representation. According to the Attorney General, he cannot even be forced to appoint a special assistant attorney general to assure that his clients have representation if he is not willing to provide lawyers from within his office. In several ways, the Attorney General's intentions would severely disrupt constitutional roles not only within the executive branch, but also vis-à-vis the judiciary.

First, the Attorney General is basically contending that he gets to make policy decisions for other executive branch agencies, not the elected leaders of those agencies. A similar power play was tried by the Iowa Attorney General and rejected by their Supreme Court:

> To accord the Attorney General the power he claims would leave all branches and agencies of government deprived of access to the court except by his grace and with his consent. In a most fundamental sense such departments and agencies would thereby exist and ultimately function only through him. We believe and hold the Attorney General possesses no such dominion or power.

Motor Club of Iowa v. Dept. of Transp., 251 N.W.2d 510, 516 (1977).[1]

In *Motor Club of Iowa*, the Iowa Attorney General refused to dismiss an appeal despite the client agency's request that he do so. Quoting a case from North Dakota (another state where the Attorney General does not have common law authority), the Iowa Supreme Court explained that simply because the Attorney General is the "legal advisor of the various departments and officers of the state government," that does not authorize him to "step[] into the shoes of such client in wholly directing the defense and the legal steps to be taken in opposition or contrary to the wishes and demands of his

[1] Iowa, like Washington, does not provide its Attorney General with common law powers. *Id.* at 513.

client or the officer or department concerned." *Id.* at 515 (*quoting State ex rel. Amerland v. Hagan*, 44 N.D. 306, 310, 175 N.W. 372, 374 (1919)).

The West Virginia Supreme Court rejected a similar power grab by its Attorney General in *Manchin v. Browning*, 296 S.E.2d 909, 170 W.Va. 779 (1983). There, the Secretary of State was sued in a challenge to the state's congressional apportionment statute. The Secretary agreed the apportionment statute was illegal and directed the Attorney General to admit so. The Attorney General refused. Even though the issue related to the constitutionality of a statute (an issue obviously within the sphere of the Attorney General's expertise), the Supreme Court held that the client agency, not the Attorney General, controlled the litigation:

> The Attorney General is not authorized in such circumstances to place himself in the position of a litigant so as to represent his concept of the public interest, but he must defer to the decisions of the officer who he represents concerning the merits and the conduct of the litigation and advocate zealously those determinations in court.

Id. at 921. In like manner, regardless whether our Attorney General is motivated by political considerations, unspecified "legal interests of the state," or anything else, he must defer to the client's control of the litigation.

Second, not only does the Attorney General's theory intrude on the decision making authority of the rest of the executive branch, it leaves

executive branch agencies without legal counsel on matters that involve litigation. State agencies are precluded from retaining outside counsel; their only attorneys are those supplied by the Attorney General. RCW 43.10.067. Thus, as recognized by the Iowa Supreme Court:

> To accord the attorney general the power he claims will leave all branches and agencies of government deprived of access to the court except by his grace and with his consent. In a most fundamental sense such departments and agencies would thereby exist and ultimately function only through him.
>
> Access to the courts gives life to the affairs of government departments and agencies. For government to properly function, that access must be unimpeded.

Motor Club of Iowa, supra at 515-16. In *Manchin*, the West Virginia Supreme Court quoted and adopted the foregoing statement from the Iowa Supreme Court and then added:

> [S]tate officers are entitled to have their lawful public policy decisions vindicated in the courts just as individuals are entitled to vindicate their personal rights at law. The courts must be open to all. When the Attorney General refuses to fulfill his duty, as required by law, to provide effective legal assistance to a state officer involved in litigation, such refusal would operate to deny due process.

Manchin v. Browning, supra, 296 S.E.2d at 921-22.

The Attorney General's claim here that he need not file the appeal nor retain a special assistant attorney general to do so lays bare his effort to leave

the Commissioner without any legal representation at all – and, implicitly, the Attorney General's power to deprive any other executive officer of legal representation, too. Reading the constitutional "shall perform" mandate to give that kind of discretion to the Attorney General is unfathomable.

Third, the Attorney General's theories not only eviscerate the authority of other executive branch agencies, his theories, if adopted, would shrink the judiciary's realm, too. The courts can only decide those cases that are brought to them for resolution. As the Iowa Supreme Court stated in rejecting a similar claim:

> The attorney general claims the right to decide which cases will be prosecuted or defended and which cases will or will not be appealed. He claims the right to present or not present various issues, arguments, and considerations. No court can make final decisions of cases and issues not brought before it.

Motor Club of Iowa, supra, 251 N.W.2d at 515-16 (emphasis supplied).

The underlying case here involves conflicting views regarding the proper interpretation of statutes governing the sale of state trust lands and the condemnation authority of public utility districts. Ultimately, the courts are the arbiter of what those laws mean. But the Attorney General, by refusing to prosecute the appeal, is effectively making that decision himself. By doing

so, he tramples not only the rights of the Commissioner, but infringes on the authority of the courts, too.

III. NEITHER THE CONSTITUTION NOR RCW 43.12.075 PROVIDE THE ATTORNEY GENERAL WITH AUTHORITY TO IGNORE THE DUTY IMPOSED ON HIM BY RCW 43.12.075

"[I]f a constitutional provision is plain and unambiguous on its face, then no construction or interpretation is necessary or permissible."[2] Further, "[t]he words of this Constitution are mandatory, unless by *express words* they are declared to be otherwise. Wash. Const., Art. I, § 29 (emphasis supplied).

The words of the Constitution and RCW 43.12.075 make this a simple case. The Constitution provides that the Attorney General "shall perform" those duties prescribed by law and the Legislature, in turn, has given the Attorney General the duty to defend actions involving the Commissioner "when requested to do so by the Commissioner." Wash. Const., Art. III, § 21; RCW 43.12.075. That could, and should, be the end of the textual analysis.

To find justification for his position, the Attorney General must either find discretion in the words of the Constitution or RCW 43.12.075 or he must

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[2] *State ex rel. Anderson v. Chapman*, 86 Wn.2d 189, 191, 543 P.2d 229 (1975); *City of Bothell v. Barnhart*, 156 Wn. App. 531, 535-36, 234 P.3d 264 (2010).

establish that he has powers beyond those enumerated in the Constitution (so-called "common-law authority"). But the Attorney General has disavowed relying on common-law authority, Resp. at 25, so we can limit our search for discretion to the words of the Constitution and the words of the statute. We address the words of the Constitution first, then the words of the statute. In Section IV, we address the Attorney General's claim that he has implied discretion as a result of his elected status. In Section V, *infra*, we address the Attorney General's claim that the mandatory words in the Constitution and statute should not be given their ordinary meaning.[3]

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[3] The Attorney General's decision not to assert common law powers is consistent with over a century of case law. *See State ex rel. Winston v. Seattle Gas and Electric Company*, 28 Wash. 488, 68 P. 946 (1902), *pet. for reh'g den.*, 70 P. 114 (1902) ("not a common law officer;" "can only exercise such power as is delegated to him by statute"); *State ex rel. Hamilton v. Superior Court of Whatcom County*, 3 Wn.2d 633, 640-41, 101 P.2d 588 (1940); *State v. O'Connell*, 83 Wn.2d 797, 812, 523 P.2d 872 (1974) ("[t]he powers of the Attorney General are created and limited not by the common law but by the law enacted by the people, either in their constitutional declarations or through legislative declarations in pursuance of constitutional provisions"). *See also Yelle v. Bishop*, 55 Wn.2d 286, 295-96, 347 P.2d 1081 (1959) (Auditor's powers are only those delegated to him by the Constitution or by the Legislature pursuant to the Constitution).

Even though the Attorney General disavows "common-law authority" as the basis for his authority to ignore the Commissioner's request here, he asserts his views in this case are consistent "with the common law history of the Attorney General," *id.* at 7, and he continues to cite cases from other states where the Attorney General enjoys common law authority, *see, e.g.*, Resp. Br. at 14, n.9 (*citing* cases from Massachusetts, Florida, and elsewhere). As was stated by the California Supreme Court in rejecting cases from jurisdictions where the Attorney General has common law authority: "Such opinions arise, however, under the peculiarities of the prevailing law in those several states, and are not persuasive here." *People ex rel. Deukmejian v. Brown, supra*, 624 P.2d at 1210.

A. The Words of the Constitution Do Not Grant Discretion to the Attorney General to Ignore Duties Imposed by Statute

The applicable constitutional provision states:

> The Attorney General shall be the legal advisor of the state officers, and shall perform such other duties as may be prescribed by law.

Wash. Const. Art. III, § 21. The second part of this constitutional provision clearly imposes on the Attorney General the duty to comply with legislatively imposed duties (such as the "duty" spelled out in RCW 43.12.075 to defend any action involving the Commissioner "when requested to do so by the Commissioner"). The ordinary plain meaning of the word "shall" establishes a mandatory duty "unless a contrary intent is evidenced *in the statute*" (or Constitution), *Erection Co. v. Dept. of Labor & Industries*, 121 Wn.2d 513, 518, 852 P.2d 288 (1993) (emphasis supplied). Indeed, the words of the Constitution "are mandatory" unless by "express words" declared otherwise. Wash. Const., Art. I, § 29.

Thus, if the Attorney General is to find support in the plain language of the Constitution for his claim that he has the power to ignore the constitutional duty imposed by the last eleven words of this section, he must find them expressed in the first part of the section which provides that he shall "be the legal advisor of the state officers."

By its own plain meaning, there is nothing in the phrase establishing the Attorney General as "the legal advisor of the state officers" that purports to limit or modify the unambiguous mandate that the Attorney General "shall perform" such duties "as may be prescribed by law." An "advisor" is not a decision maker. An advisor is "one who advises" and the verb "advise" is defined as "to give advice to; to offer an opinion, as worthy or expedient to be followed; to counsel; to warn." Int'l Dictionary of the English Language (1899) at 26. The first definition of "advice" is "an opinion recommended or offered, as worthy to be followed; counsel." *Id. See* App. A.

The constitutional provision establishing the Attorney General as the "legal advisor" for State officers mirrors the role of an attorney as set forth in the Rules of Professional Conduct. Those rules provide that an attorney provides advice, but an attorney does not make decisions on whether to initiate or settle litigation. RPC 1.2(a) ("lawyer shall abide by a client's decisions concerning the objectives of representation" and "shall abide by a client's decisions whether to settle a matter").

There are no "express words" in the "legal advisor" clause which create an exception from the mandate imposed by the very next phrase that the Attorney General "shall perform such other duties as may be prescribed

by law." To the contrary, the advisory role of the Attorney General establishes him in a role inferior to his client agency when the client is deciding whether to defend a lawsuit. *See, e.g., Arizona State Land Dept. v. McFate*, 87 Ariz. 139, 144, 348 P.2d 912, 915 (1960) (status as "legal advisor" does not authorize actions contrary to client agency's request).[4] In short, the "legal advisor" clause is not license for the Attorney General to subvert the interests of his client agency.

The Attorney General cites *Young Americans for Freedom v. Gorton*, 91 Wn.2d 204, 207 n.2, 210, 588 P.2d 195 (1978), for the proposition that the Attorney General's role as "legal advisor" vests him with "broad discretion in the exercise of his duties." Resp. at 19. But the issue in *Young Americans* had nothing to do with the "shall perform" clause nor does it address a situation where a client agency asks the Attorney General to defend it. In *Young Americans*, the issue was whether the Attorney General, as "legal advisor" to the University of Washington, could file an *amicus* brief in a case pending in federal court supportive of the University's interests, not whether

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[4] The Attorney General in Arizona, as in Washington, does not have common law powers. *Id.*, 348 P.2d at 914.

he had the discretion to ignore a request for defense by a client agency. *Young Americans* sheds no light on the present issue.[5]

In short, there is nothing in the words of the Constitution ("legal advisor;" "shall perform") that grants the Attorney General the authority to decline to represent a state officer upon request or upon the Attorney General's individual determination of "what's best for the State." The people elect the Attorney General to be a legal advisor for state officers, not to eviscerate the power of other elected officials in the executive branch by declining to provide legal representation when requested.

B. RCW 43.12.075 Creates a Duty for the Attorney General to Defend an Action When Requested by the Commissioner

The constitutional mandate that the Attorney General "shall perform" such duties as are prescribed by law includes the duty in RCW 43.12.075 that it "shall be the duty of the Attorney General" to defend any action involving

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[5] The Attorney General focuses on language in a footnote where the court stated that it "conceive[s] the phrase 'legal adviser' in the context of the Attorney General's status in state government contemplates something more than a mere passive role in the formulation and implementation of state governmental policies and practices." *Id.* at 207, n.2. That statement was made in response to the appellant's assertion that because neither the Constitution nor implementing statutes made express reference to the Attorney General filing *amicus* briefs, he lacked authority to do so. This Court's determination that as "legal advisor" the Attorney General could file an *amicus* brief in support of the University of Washington provides no basis for reaching the opposite conclusion, *i.e.*, that his role as "legal advisor" authorizes him to refuse a request from a state officer for defense in pending litigation.

the Commissioner "when requested to do so by the Commissioner . . ." The Attorney General all but ignores this unambiguous, dispositive statute.

First, he briefly argues that the statutory mandate ("shall be the duty . . . to . . . defend") is not a mandate to defend, but only a mandate to consider mounting a defense. Resp. at 32. But there is nothing in the words of this statute that suggests that the Attorney General has any discretion and the Attorney General cites no cases construing this statute that way.

Then, in a single sentence, the Attorney General advances the argument that the duty to "defend" an action at the request of the Commissioner involves something more than the ministerial filing of an answer or an appeal. Resp. at 32. We agree that there is an inevitable exercise of legal discretion in making various judgments once an appeal is filed. But we seek mandamus only to assure that the contingency of the existing appeal removed. From that point on, the Rules of Professional Conduct will provide adequate assurance that whatever attorneys prosecute the appeal will do so conscientiously and with responsible vigor. RPC 1.1 and 1.3 (lawyers shall provide "competent" and "diligent" representation). We do not ask this Court to oversee or mandate the specific management of the appeal.

Thus, this case is unlike *Blue Sky Advocates v. State*, 107 Wn.2d 112, 727 P.2d 644 (1986), where this court refused to dictate to the Attorney General the extent to which his office had to participate in administrative proceedings to fulfill his role as "Counsel for the Environment." We seek only to compel the Attorney General to file an unconditional appeal, relying on the Rules of Professional Conduct to assure that it is prosecuted thereafter competently and diligently. *See* RPC 1.1, 1.3.[6]

IV. THE ATTORNEY GENERAL'S STATUS AS AN ELECTED OFFICIAL DOES NOT GIVE HIM DISCRETION TO IGNORE HIS CONSTITUTIONAL DUTIES

The Attorney General argues that because his office is created by the Constitution and he is independently elected, that he has the responsibility to serve as a "constitutional check" on other executive branch agencies. We note, first, that there is nothing in the words of the Constitution that purports to provide the Attorney General with the authority to check (let alone checkmate) other independently elected State officers. The words of the Constitution simply provide that the Attorney General is to provide other State officers with legal advice and that he "shall perform" such duties as prescribed by the Legislature. Nothing more. *See, e.g., State v. Gattavara*,

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[6] The Attorney General and the *amicus* note that RCW 43.12.075 provides the Attorney General with authority to initiate or defend an action "upon the Attorney

182 Wash. 325, 47 P.2d 18 (1935) (constitutional grant of authority to the Attorney General is "not self-executing," but rather depends on implementing legislation). Whatever implied authority the Attorney General may have to serve as some kind of "constitutional check," the Constitution certainly does not provide the "express words" necessary to create an exception from the explicit constitutional mandate that he "shall perform such other duties as may be prescribed by law." Wash. Const., Art. I, § 29; Art. III, § 21.

Second, simply because the Attorney General is independently elected does not mean he has authority to ignore duties expressly imposed on him by the Constitution and the Legislature pursuant to the Constitution. As this Court stated in rejecting a similar claim by a County prosecutor: "Even though prosecuting attorneys are independently elected County officials, RCW 36.16.030, their powers are limited to those expressly granted by statute." *Osborn v. Grant County*, 130 Wn.2d 625, 626, 926 P.2d 911 (1996). *See also Winston, supra*, 28 Wash. at 500 (though both the prosecuting attorney and Attorney General are constitutionally created offices, the "powers of both are created and limited . . . by the law enacted by the people, either in their constitutional declarations or through legislative declarations in pursuance of constitutional provisions").

General's own initiative." We responded to that issue in our answer to the *amicus*.

V. THE ATTORNEY GENERAL RELIES ON CASES CONSTRUING DISSIMILAR STATUTES UNDER DISSIMILAR CIRCUMSTANCES

Lacking any textual support for his claim of discretion, and failing to establish discretion inherent in his role as an elected official, the Attorney General returns to the words of the Constitution and RCW 43.12.075 and argues that the word "shall" should be construed here to allow for the exercise of discretion. The Attorney General can cite no case, of course, where this Court has held that his constitutional mandate to "perform such other duties as may be prescribed by law" affords him any discretion when the duty prescribed by law is the duty to represent a client agency upon request of the client agency. Similarly, the Attorney General has not cited any cases that have construed the language in RCW 43.12.075 to be anything other than mandatory.

Instead, the Attorney General cites cases involving different factual circumstances and different statutes. Many of those cases simply involve application of the well established principle of prosecutorial discretion. Repeatedly, when third parties have come before the courts seeking a writ of mandamus to compel the Attorney General or a local prosecutor to prosecute alleged crimes or civil wrongs, the courts have declined to do so. Those

cases have absolutely nothing to do with the present controversy. The Attorney General has not found a single case (invoking prosecutorial discretion or any other concept) which authorizes the Attorney General to disregard the request from a client agency to defend the agency in a pending lawsuit and certainly cites no such case involving the statute at issue here.

The Attorney General starts with *State ex rel. Rosbach v. Pratt*, 68 Wash. 157, 122 P. 987 (1912). While the statute in *Rosbach* (like the statute in this case) stated that the Attorney General is mandated to act "when requested by any of the commissioners," *Rosbach* did not involve a request by the commissioners (the client agency). The court was only considering a request by a private person to force both the Attorney General and the commissioners to act. Not surprisingly, the court did not allow a private citizen to dictate to the instruments of government how their prosecutorial powers would be exercised. The court's statement in that context that the Attorney General had discretion does not support the Attorney General's claim that he has discretion to ignore a request by a client agency.

Likewise, in *Berge* and *Boe*,[7] the court rejected efforts by third parties to force the Attorney General to recover funds disbursed to students under a

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[7] *Berge v. Gorton*, 88 Wn.2d 756, 567 P.2d 187 (1977); *Boe v. Gorton*, 88 Wn.2d 773, 567 P.2d 197 (1977).

statute that subsequently was held unconstitutional. Neither case involved a request by a client agency for the Attorney General to take action on behalf of the client agency. Nor did either case address language like that in RCW 43.12.075 mandating the Attorney General to act on behalf of the client agency when requested to do so. Rather, both cases involved efforts by third parties to force the Attorney General to act. The third parties claimed that the general language in RCW 43.10.030 created a duty for the Attorney General to act at *their* request.

Not only are these cases distinguishable because they involve claims by third parties, but the language of RCW 43.10.030(2) is dramatically different than that of the subject statute, RCW 43.12.075. The statute addressed in *Berge* and *Boe* provides that the Attorney General "shall" initiate actions, but only those "which may be necessary in the execution of the duties of any state officer." The "which may be necessary" language obviously imports a significant degree of discretion. *See* Op. Br. at 17-18.

Moreover, RCW 43.10.030(2) makes no reference to a client agency directing the Attorney General to initiate or defend an action. The statute at issue here does. The Attorney General's reliance on RCW 43.10.030(2) and the cases construing it is sorely misplaced.

In *State v. Gattavara*, 182 Wash. 325, 47 P.2d 18 (1935), the issue was whether an agency could use its own attorneys, not attorneys supplied by the Attorney General. This Court construed the applicable statutes to restrict the agency to using the Attorney General. The Court did not address whether the Attorney General could decline a request from the agency. Indeed, the Attorney General apparently supported the agency's lawsuit. *Id.* at 332.

Likewise, in *State v. Pacific Tel. & Tel.*, 27 Wn.2d 893, 181 P. 637 (1947), this Court construed a statute that allowed the utility commission to recover from a utility the commission's expenses incurred during administrative proceedings. The decision has nothing to do with the duty of the Attorney General to defend an agency upon request.

In *State ex rel. Dunbar v. State Board of Equalization*, 140 Wash. 433, 249 P. 996 (1926), the issue was whether the Attorney General had the authority to file an action against a wayward state agency. The issue was one of authority, not duty. The court concluded the Attorney General has such authority. The court did not address whether the Attorney General also had the discretion to reject a defense request from a client agency.[8]

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[8] In our Opening Brief, we explained that *Dunbar* stands for the proposition that the Attorney General may sue a state agency, not that the Attorney General need not defend a state agency, even one that an Attorney General believes to be misguided. Opening Br. at 16. The Attorney General has not responded to that characterization of *Dunbar*.

But that issue was addressed in a subsequent case, *Reiter v. Wallgren, supra*. In *Reiter*, this court clarified "that the Attorney General may properly represent both sides in an action between the State and one of its officers." *Sanders v. State*, *supra*, 139 Wn. App. at 209. That is, even when the Attorney General believes that an agency has erred to such an extent that the Attorney General initiates an action *against* the agency, still the Attorney General should assign an assistant or special assistant attorney general to represent the agency.

In a footnote, the Attorney General states that in *Sanders v. State*, 166 Wn.2d 164, 207 P.3d 1245 (2009), this court held that RCW 43.10.040 provides the Attorney General with discretion to decline representation to a justice accused of an ethical impropriety. Not only was this a different statute, but this Court did not state the Attorney General enjoyed any discretion even under that statute. Rather, the Court held that the allegations did not involve an "official act" and, therefore, the statute did not apply. *Id.* at 172.

What do all of these cases cited by the Attorney General tell us about the issue present here? Not much. None of the cases involve the issue of whether the Attorney General can ignore his statutory and constitutional duty

to represent a client agency when requested by the client agency. None of the cases address the specific language of RCW 43.12.075. These cases stand for unremarkable propositions such as that the Attorney General has prosecutorial discretion and cannot be compelled to act at the behest of a private party and that he has the authority to sue wayward agencies and to file *amicus* briefs. These cases provide not an iota of support for the Attorney General's claim that he can refuse a request by the Commissioner for litigation defense pursuant to RCW 43.12.075.

VI. THIS CONFLICT COULD HAVE BEEN AVOIDED

This inter-agency conflict could readily have been avoided. This Court has confirmed that where the Attorney General has a position that conflicts with that of a state agency, the proper remedy is not for the Attorney General to leave the state agency defenseless, but to appoint separate assistant attorney generals or a special assistant attorney general:

> Inevitably, the attorney general, whatever may be his personal views, will be charged as a public officer with the responsibility of seeing that both sides of an issue are adequately represented to the court when there is a conflict between state officials or departments, or when there is a question as to whether a state officer, committee, or department is acting in an illegal manner, to the detriment of the public interest.

Reiter v. Wallgren, supra, 28 Wn.2d at 879. Indeed, "it may be incumbent upon the Attorney General to both prosecute and defend an action." *Id.* at 878 (*quoting Hansen v. Carr*, 73 Cal. App. 511, 238 P. 1048, 1050 (1925)).

In *Reiter*, this Court cited with approval an earlier case in which the Commissioner and the Attorney General were on opposite sides. The Attorney General did not leave the Commissioner without a lawyer. Instead, the Commissioner was "represented by a special assistant attorney general 'employed, appointed, or retained' by the Attorney General." That attorney "successfully attacked extensions of timber contracts for which the Attorney General had voted and which he had approved, as a member of the Board of State Land Commissioners." *Id.* at 879-80 (emphasis supplied). *See also Motor Club of Iowa, supra* (approving use of special assistant attorney generals where conflict exists between Attorney General and state agency); *Manchin v. Browning, supra* (same).

The Attorney General states that in his judgment an appeal should not be brought because of its potential impact on other state agencies and his assessment of the strength of the case.[9] If the Attorney General believed he

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[9] In the Superior Court proceedings of the underlying action, the Attorney General vigorously defended the Commissioner. The Attorney General did not then suggest that the positions he was taking lacked merit. In this Court, the Attorney General does not assert that the positions he took below lacked merit; that they were frivolous; or that they

could not provide adequate representation to the Commissioner because of those views, then it was incumbent on the Attorney General to appoint a special assistant attorney general to represent the Commissioner. He could not expand his role from legal advisor to one that nullified the authority of the Commissioner and infringed on the power of the courts.

VII. ATTORNEY'S FEES SHOULD BE AWARDED

The Commissioner should not be forced to incur the expense of this litigation. The Constitution without exception imposes on the Attorney General the duty to comply with the implementing statutes. In turn, RCW 43.12.075 unambiguously and without exception imposes on the Attorney General the duty to represent the Commissioner. In response, the Attorney General has cited not a single word of the Constitution or RCW 43.12.075 that provides him with any discretion in this matter. He has not cited a single case or court that has held that the Attorney General has discretion to not

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failed to meet the standards of CR 11. As discussed in greater detail in our response to the *amicus* brief, resolving this petition should not involve an analysis of the issues in the underlying appeal.

We note, however, that the Attorney General does state in his Response that "the decision of the Superior Court is sound." Resp. at 1. We do not construe this statement as a claim by the Attorney General that an appeal on behalf of the Commissioner would be "frivolous" or a violation of CR 11. Thus, this proceeding does not raise the issue of whether the Commissioner is entitled to an attorney to pursue a frivolous appeal and the writ of mandamus should not be denied on that basis. *See also* Commissioner's Response to Corrected *Amicus Curiae* Brief at 3, note 2.

defend a state agency upon request. Instead, he cites cases involving other statutes and involving other factual circumstances and issues. The Attorney General is grasping at straws and, thereby, forcing the Commissioner to incur litigation expenses. The Attorney General's positions are wholly unsupported by the words of the Constitution or the applicable statute and the holding of any of the cases he cites. Under these circumstances, this Court should shift the attorney's fees and make them the responsibility of the Attorney General.

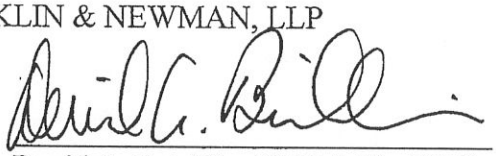
VIII. CONCLUSION

For the foregoing reasons, the writ should issue directing the Attorney General to eliminate the "contingency" from the previously filed Notice of Appeal.

Dated this 25 day of October, 2010.

Respectfully submitted,

BRICKLIN & NEWMAN, LLP

By: 

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APPENDIX A

EXCERPT FROM WEBSTERS INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE

WEBSTER'S

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Comprising the issues of 1864, 1879, and 1884

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OF

NOAH PORTER, D. D., LL. D.
Of Yale University

WITH A VOLUMINOUS APPENDIX

SPRINGFIELD, MASS.
PUBLISHED BY G. & C. MERRIAM COMPANY
1899

or resist them; a member of an opposing or hostile party; an opponent; an antagonist; an enemy; a foe.

His ancient knot of dangerous *adversaries*. *Shak.*

Agree with thine *adversary* quickly. *Matt.* v. 25.

It may be thought that to vindicate the permanency of truth is to dispute without an *adversary*. *Beattie.*

The Adversary, Satan, or the Devil.

Syn. — Adversary, Enemy, Opponent, Antagonist. *Enemy* is the only one of these words which necessarily implies a state of personal hostility. *Foes* may be *adversaries*, *antagonists*, or *opponents* to each other in certain respects, and yet have no feelings of general animosity. An *adversary* may be simply one who is placed for a time in a hostile position, as in a lawsuit, an argument, in chess playing, or at fence. An *opponent* is one who is ranged against another (perhaps passively) on the opposing side; as a political *opponent*, an *opponent* in debate. An *antagonist* is one who struggles against another with active effort, either in a literal fight or in verbal debate.

Ad'ver-sa-ry (ăd'vẽr-sȧ-rỹ), *a.* 1. Opposed; opposite; adverse; antagonistic. [*Archaic*] *Bp. King.*

2. (*Law*) Having an opposing party; not unopposed; as, an *adversary* suit.

Ad-ver'sa-tive (ăd-vẽr'sȧ-tĭv), *a.* [L. *adversativus*, fr. *adversari*.] Expressing contrariety, opposition, or antithesis; as, an *adversative* conjunction (*but*, *however*, *yet*, etc.); an *adversative* force. — **Ad-ver'sa-tive-ly**, *adv.*

Ad-ver'sa-tive, *n.* An adversative word. *Harris.*

Ad'verse (ăd'vẽrs), *a.* [OE. *advers*, OF. *avers*, *adivers*, fr. L. *adversus*, p. p. of *advertere* to turn to. See Advert.]

1. Acting against, or in a contrary direction; opposed; contrary; opposite; conflicting; as, *adverse* winds; an *adverse* party; a spirit *adverse* to distinctions of caste.

2. Opposite. "Calpe's *adverse* height." *Byron.*

3. In hostile opposition to; unfavorable; ungropitious; contrary to one's wishes; unfortunate; calamitous; afflictive; hurtful; as, *adverse* fates, *adverse* circumstances, things *adverse*.

Happy were it for us all if we bore prosperity as well and wisely as we endure an *adverse* fortune. *Southey.*

Adverse possession (*Law*), a possessing of real property avowedly contrary to some claim of title in another person. *Abbott.*

Syn. — Averse; reluctant; unwilling. See Averse.

Ad-verse' (ăd-vẽrs'), *v. t.* [L. *adversari*; *ad*, OF. *aver-ser*.] To oppose; to resist. [*Obs.*] *Gower.*

Ad'verse-ly (277), *adv.* In an adverse manner; inimically; unfortunately; contrariwise.

Ad'verse-ness, *n.* The quality or state of being adverse; opposition.

Ad-ver'si-fo'li-ate (ăd-vẽr'sĭ-fō'lĭ-āt), } *a.* [L. *adver-*
Ad-ver'si-fo'li-ous (ăd-vẽr'sĭ-fō'lĭ-ŭs), } *sus* opposite + *folium* leaf.] (*Bot.*) Having opposite leaves, as plants which have the leaves so arranged on the stem.

Ad-ver'sion (ăd-vẽr'shŭn), *n.* [L. *adversio*.] A turning towards; attention. [*Obs.*] *Dr. H. More.*

Ad-ver'si-ty (ăd-vẽr'sĭ-tỹ), *n.*; *pl.* Adversities (-tĭz). [OE. *adversite*, F. *adversité*, fr. L. *adversitas*.] 1. Opposition; contrariety. [*Obs.*] *Wyclif.*

2. A condition attended with severe trials; a state of adverse fortune; misfortune; calamity; affliction, trial; — opposed to *well-being* or *prosperity*.

Adversity is not without comforts and hopes. *Bacon.*

Syn. — Affliction; distress; misery; disaster; trouble; suffering; trial.

Ad-vert' (ăd-vẽrt'), *v. i.* [*imp. & p. p.* Adverted; *p. pr. & vb. n.* Adverting.] [L. *advertere*, v. t., to turn to; *ad* + *vertere* to turn: cf. F. *avertir*. See Averse.] To turn the mind or attention; to refer; to take heed or notice; — with *to*; as, he *adverted* to what was said.

I may again *advert* to the distinction. *Owen.*

Syn. — To refer; allude; regard. See Refer.

Ad-vert'ence (-ens), } *n.* [OF. *advertence*, *aver-*
Ad-vert'en-cy (-en-sỹ), } *tence*, LL. *advertentia*, fr. L. *advertens*. See Advertent.] The act of adverting, or the quality of being advertent; attention; notice; regard; heedfulness.

To this difference it is right that *advertence* should be had in regulating taxation. *J. S. Mill.*

Ad-vert'ent (-ent), *a.* [L. *advertens*, *-entis*, p. pr. of *advertere*. See Advert.] Attentive; heedful; regardful. *Sir M. Hale.* — **Ad-vert'ent-ly**, *adv.*

Ad'ver-tise' (ăd'vẽr-tīz' or ăd'vẽr-tīz'; 277), *v. t.* [*imp. & p. p.* Advertised (-tīzd' or -tĭzd'); *p. pr. & vb. n.* Advertising (-tīz'ing or -tĭz'ing).] [F. *avertir*, formerly also spelt *advertir*, to warn, give notice to, L. *advertere* to turn to. The ending was probably influenced by the noun *advertisement*. See Advert.] 1. To give notice to; to inform or apprise; to notify; to make known; hence, to warn; — often followed by *of* before the subject of information; as, to *advertise* a man of his loss. [*Archaic*]

I will *advertise* them what this people shall do. Num. xxiv. 14.

2. To give public notice of; to announce publicly, esp. by a printed notice; as, to *advertise* goods for sale, a lost article, the sailing day of a vessel, a political meeting.

Syn. — To apprise; inform; make known; notify; announce; proclaim; promulgate; publish.

Ad-ver'tise-ment (ăd-vẽr'tĭz-ment or ăd'vẽr-tīz'ment; 277), *n.* [F. *avertissement*, formerly also spelled *advertisement*, a warning, giving notice, fr. *avertir*.] 1. The act of informing or notifying; notification. [*Archaic*]

An *advertisement* of danger. *Sp. Barrow.*

2. Admonition; advice; warning. [*Obs.*]

Therefore give me no counsel:
My griefs cry louder than *advertisement*. *Shak.*

3. A public notice, especially a paid notice in some public print; anything that advertises; as, a newspaper containing many *advertisements*.

Ad'ver-tis'er (ăd'vẽr-tīz'ẽr or ăd'vẽr-tĭz'ẽr), *n.* One who, or that which, advertises.

Ad-vice' (ăd-vīs'), *n.* [OE. *avis*, F. *avis*; *à* + OF. *vis*, fr. L. *visum* seemed, seen; really p. p. of *videre* to see, so that *vis* meant that which has seemed best. See Vision, and cf. Avise, Advise.] 1. An opinion recommended or offered, as worthy to be followed; counsel.

We may give *advice*, but we can not give counsel. *Emerson.*

2. Deliberate consideration; knowledge. [*Obs.*]

How shall I dote on her with more *advice*,
That thus without *advice* begin to love her? *Shak.*

3. Information or notice given; intelligence; as, late *advices* from France; — commonly in the plural.

☞ In commercial language, *advice* usually means information communicated by letter; — used chiefly in reference to drafts or bills of exchange; as, a letter of *advice*. *McElrath.*

4. (*Crim. Law*) Counseling to perform a specific illegal act. *Wharton.*

Advice boat, a vessel employed to carry dispatches or to accompany; a dispatch boat. — **To take advice**, (*a*) To accept advice. (*b*) To consult with another or others.

Syn. — Counsel; suggestion; recommendation; admonition; exhortation; information; notice.

Ad-vis'a-bil'i-ty (ăd-vīz'ȧ-bĭl'ĭ-tỹ), *n.* The quality of being advisable; advisableness.

Ad-vis'a-ble (ăd-vīz'ȧ-b'l), *a.* 1. Proper to be advised or to be done; expedient; prudent.

Satan judge it *advisable* for a man to account with his heart every day. *South.*

2. Ready to receive advice. [*R.*] *South.*

Syn. — Expedient; proper; desirable; befitting.

Ad-vis'a-ble-ness, *n.* The quality of being advisable or expedient; expediency; advisability.

Ad-vis'a-bly, *adv.* With advice; wisely.

Ad-vise' (ăd-vīz'), *v. t.* [*imp. & p. p.* Advised (-vīzd'); *p. pr. & vb. n.* Advising (-vīz'ing).] [OE. *aviser* to perceive, consider, inform, F. *aviser*, fr. LL. *advisare*; *ad* + *visare*, fr. L. *videre*, *visum*, to see. See Avise, and cf. Avise.] 1. To give advice to; to offer an opinion, as worthy or expedient to be followed; to counsel; to warn. "I shall no more *advise* thee." *Milton.*

2. To give information or notice to; to apprise; to inform; — with *of* before the thing communicated; as, we were *advised* of the risk.

To advise one's self, to bethink one's self; to take counsel with one's self; to reflect; to consider. [*Obs.*]

Bid thy master well *advise* himself. *Shak.*

Syn. — To counsel; admonish; apprise; acquaint.

Ad-vise', *v. i.* 1. To consider; to deliberate. [*Obs.*]

Advise if this be worth attempting. *Milton.*

2. To take counsel; to consult; — followed by *with*; as, to *advise* with friends.

Ad-vis'ed-ly (ăd-vīz'ĕd-lỹ), *adv.* 1. Circumspectly; deliberately; leisurely. [*Obs.*] *Shak.*

2. With deliberate purpose; purposely; by design. "*Advisedly* undertaken." *Suckling.*

Ad-vis'ed-ness, *n.* Deliberate consideration; prudent procedure; caution.

Ad-vise'ment (ăd-vīz'ment), *n.* [OE. *avisement*, F. *avisement*, fr. *aviser*. See Advise, and cf. Avisement.]

1. Counsel; advice; information. [*Archaic*]

And paused awhile, waiting advisement takes of what had passed in council. *Daniel.*

2. Consideration; deliberation; consultation.

Tempering the paradox with *advisement* slow. *Spenser.*

Ad-vis'er (ăd-vīz'ẽr), *n.* One who advises.

Ad-vis'er-ship, *n.* The office of an adviser. [*R.*]

Ad-vi'so (ăd-vī'zō), *n.* [Cf. Sp. *aviso*. See Advise.] Advice; counsel; suggestion; also, a dispatch or advice boat. [*Obs.*] *Sir T. Browne.*

Ad-vi'so-ry (-sō-rỹ), *a.* Having power to advise; containing advice; as, an *advisory* council; their opinion is merely *advisory*.

The General Association has a general *advisory* superintendence over all the ministers and churches. *Trumbull.*

Ad'vo-ca-cy (ăd'vō-kȧ-sỹ), *n.* [OF. *advocacie*, LL. *advocatia*. See Advocate.] The act of pleading for or supporting; work of advocating; intercession.

Ad'vo-cate (ăd'vō-kāt), *n.* [OE. *avocat*, *avocas*, OF. *avocat*, fr. L. *advocatus*, one summoned or called to another; properly the p. p. of *advocare* to call to, call to one's aid; *ad* + *vocare* to call. See Advowee, Avouch, Voice.] 1. One who pleads the cause of another. Specifically: One who pleads the cause of another before a tribunal or judicial court; a counselor.

☞ In the English and American Law, *advocate* is the name as "counsel," "counselor," or "barrister." In the civil and ecclesiastical courts, the term signifies the same as "counsel" at the common law.

2. One who defends, vindicates, or espouses any cause by argument; a pleader; as, an *advocate* of free trade, an *advocate* of truth.

3. Christ, considered as an intercessor.

We have an *Advocate* with the Father. 1 *John* ii. 1.

Faculty of advocates (*Scot.*), the Scottish bar in Edinburgh. — **Lord advocate** (*Scot.*), the public prosecutor of crimes, and principal crown lawyer. — **Judge advocate**. See under Judge.

Ad'vo-cate (ăd'vō-kāt), *v. t.* [*imp. & p. p.* Advocated (-kā'tĕd); *p. pr. & vb. n.* Advocating (-kā'tĭng).] [See Advocate, *n.*, Avouch, Avow.] To plead in favor of; to defend by argument, before a tribunal or the public; to support, vindicate, or recommend publicly.

To *advocate* the cause of the client. *Sp. Sanderson* (1624).

This is the only thing distinct and sensible, that has been *advocated*. *Burke.*

Eminent orators were engaged to *advocate* his cause. *Maynard.*

Ad'vo-cate, *v. i.* To act as advocate. [*Obs.*] *Fuller.*

Ad'vo-cate-ship, *n.* Office or duty of an advocate.

Ad'vo-ca'tion (ăd'vō-kā'shŭn), *n.* [L. *advocatio*; cf. OF. *avocation*. See Advowson.] 1. The act of advocating or pleading; plea; advocacy. [*Archaic*]

The holy Jesus . . . sits in heaven in a perpetual *advocation* for us. *Jer. Taylor.*

2. Advowson. [*Obs.*]

The donations or *advocations* of church livings. *Sanderson.*

3. (*Scots Law*) The process of removing a cause from an inferior court to the supreme court. *Bell.*

Ad'vo-ca-to-ry (ăd'vō-kȧ-tō-rỹ), *a.* Of or pertaining to an advocate. [*R.*]

Ad-voke' (ăd-vōk'), *v. t.* [L. *advocare*. See Advocate.] To summon; to call. [*Obs.*]

Queen Katharine had privately prevailed with the pope to *advoke* the cause to Rome. *Fuller.*

Ad'vo-lu'tion (ăd'vō-lū'shŭn), *n.* [L. *advolvere*, *advolutum*, to roll to.] A rolling toward something. [*R.*]

Ad-vou'trer (ăd-vou'trẽr), *n.* [OF. *avoutre*, *avoltre*, fr. L. *adulter*. Cf. Adulterer.] An adulterer. [*Obs.*]

Ad-vou'tress (-trĕs), *n.* An adulteress. [*Obs.*] *Bacon.*

Ad-vou'try } (-trỹ), *n.* [OE. *avoutrie*, *avoutrie*,
Ad-vow'try } *advoutrie*, OF. *avoutrie*, *avoltrie*, fr. L. *adulterium*. Cf. Adultery.] Adultery. [*Obs.*] *Bacon.*

Ad-vow-ee' (ăd-vou-ē'), *n.* [OE. *avowe*, F. *avoué*, fr. L. *advocatus*. See Advocate, Avowee, Avowry.] One who has an advowson. *Cowell.*

Ad-vow'son (ăd-vou'zŏn *or* -zŭn; 277), *n.* [OE. *avoweison*, OF. *avoeison*, fr. L. *advocatio*. Cf. Advocation.] (*Eng. Law*) The right of presenting to a vacant benefice or living in the church. [Originally, the relation of a patron (*advocatus*) or protector of a benefice, and thus privileged to nominate or present to it.]

☞ The benefices of the Church of England are in every case subjects of presentation. They are nearly 12,000 in number; the *advowsons* of more than half of them belong to private persons, and of the remainder to the crown, bishops, deans and chapters, universities, and colleges. *Amer. Cyc.*

Ad-voy'er (ăd-voi'ẽr), *n.* See Avoyer. [*Obs.*]

Ad-ward' (ăd-wôrd'), *n.* Award. [*Obs.*] *Spenser.*

‖ **Ad'y-na'mi-a** (ăd'ĭ-nā'mĭ-ȧ), *n.* [NL. *adynamia*, fr. Gr. ἀδυναμία want of strength; ἀ priv. + δύναμις power, strength.] (*Med.*) Considerable debility of the vital powers, as in typhoid fever. *Dunglison.*

Ad'y-nam'ic (ăd'ĭ-năm'ĭk), *a.* [Cf. F. *adynamique*. See Adynamy.] 1. (*Med.*) Pertaining to, or characterized by, debility of the vital powers; weak.

2. (*Physics*) Characterized by the absence of power or force.

Adynamic fevers, malignant or putrid fevers attended with great muscular debility.

A-dyn'a-my (ȧ-dĭn'ȧ-mỹ), *n.* Adynamia. [*R.*] *Marvin.*

‖ **Ad'y-tum** (ăd'ĭ-tŭm), *n.*; *pl.* Adyta (-tȧ). [L., fr. Gr. ἄδυτον, n., fr. ἄδυτος, a., not to be entered; ἀ priv. + δύειν to enter.] The innermost sanctuary or shrine in ancient temples, whence oracles were given. Hence: A private chamber; a sanctum.

Adz } (ădz), *n.* [OE. *adese*, *adis*, *adse*, AS. *adesa*,
Adze } *adese*, as, hatchet.] A carpenter's or cooper's tool, formed with a thin arching blade set at right angles to the handle. It is used for chipping or slicing away the surface of wood.

Adz.

Æ or **Æ**. A diphthong in the Latin language; used also by the Saxon writers. It answers to the Gr. αι. The Anglo-Saxon short æ was generally replaced by a, the long æ by *e* or *ea*. In derivatives from Latin words with æ, it is usually superseded by *e*. For most words found with this initial combination, the reader will therefore search under the letter E.

‖ **Æ-cid'i-um** (ē-sĭd'ĭ-ŭm), *n.*; *pl.* Æcidia (-ȧ). [NL., dim. of Gr. αἶξις injury.] (*Bot.*) A form of fruit in the cycle of development of the Rusts or Brands, an order of fungi, formerly considered independent plants.

Æ'dile (ē'dĭl), *n.* [L. *aedilis*, fr. *aedes* temple, public building. Cf. Edify.] A magistrate in ancient Rome, who had the superintendence of public buildings, highways, shows, etc.; hence, a municipal officer.

Æ'dile-ship, *n.* The office of an ædile. *T. Arnold.*

Æ-ge'an (ē-jē'ăn), *a.* [L. *Aegeus*; Gr. Αἰγαῖος.] Of or pertaining to the sea, or arm of the Mediterranean sea, east of Greece. See Archipelago.

‖ **Æ'gi-cra'ni-a** (ē'jĭ-krā'nĭ-ȧ), *n.*; *pl.* [NL., fr. Gr. αἴξ, αἰγος, goat + κρανία, n. pl., heads.] (*Archit.*) Sculptured ornaments, used in classical architecture, representing rams' heads or skulls.

Æ'gi-lops (ē'jĭ-lŏps *or* ē'jĭl), *n.* [L. *aegilops*, Gr. αἰγίλωψ, fr. αἴξ, gen. αἰγός, goat + ὄψ eye.] 1. (*Med.*) An ulcer or fistula in the inner corner of the eye.

2. (*Bot.*) (*a*) The great wild oat grass or other cornfield weed. *Crabb.* (*b*) A genus of plants, called also *Aegilopsis*.

‖ **Æ'gis** (ē'jĭs), *n.* [L. *aegis*, fr. Gr. αἰγίς a goat skin, a shield, αἴξ goat, or fr. ἀίσσω to rush.] A shield as protective armor; — applied in mythology to the shield of Jupiter which he gave to Minerva. Also fig.: A shield; a protection.

Æ-goph'o-ny (ē-gŏf'ō-nỹ), *n.* Same as Egophony.

‖ **Æ-gro'tat** (ē-grō'tăt), *n.* [L., he is sick.] (*Cambridge Univ.*) A medical certificate that a student is ill.

Æ-ne'id (ē-nē'ĭd *or* ē'nē-ĭd), *n.* [L. *Aeneis*, *Aeneidis*, or *-idos*: cf. F. *Énéide*.] The great epic poem of Virgil, of which the hero is Æneas.

Æ-ne'ous (ē-nē'ŭs), *a.* [L. *aëneus*.] (*Zoöl.*) Colored like bronze.

Æ-o'li-an (ē-ō'lĭ-ăn), *a.* [L. *Aeolius*, Gr. Αἰόλιος.] 1. Of or pertaining to Æolia or Æolis, in Asia Minor, colonized by the Greeks, or to its inhabitants; made as, the *Æolian* dialect.

2. Pertaining to Æolus, the mythic god of the winds; pertaining to, or produced by, the wind; aërial.

Viewless forms the *æolian* organ play. *Campbell.*

Æolian attachment, a contrivance often attached to a pianoforte, which prolongs the vibrations, increases the